

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF WELLTON

THIS AGREEMENT is entered into 15th October, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF WELLTON acting by and through its MAYOR and TOWN COUNCIL (the "Town").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

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NO. 25551  
Filed with the Secretary of State  
Date Filed: 10/15/02

Petrey Gayless  
Secretary of State

By: William D. Haenewald

6. The Town, in order to obtain federal funds for the construction of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and FHWA, including actual construction engineering and administration costs (CE).

7. The work embraced in this agreement is the Design and Construction of Los Angeles Avenue Pathway, and the estimated costs are as follows:

Estimated Project Cost (Design and Construction)	\$521,979.00
Estimated Design Cost	\$ 32,233.00
Federal Aid Funds @ 94.3%	<u>\$ 30,396.00</u>
<i>Town of Wellton Funds @ 5.7%</i>	<u>\$ 1,837.00</u>
Estimated Construction Cost	\$405,587.00
5% Surcharge of Construction Cost	\$ 20,279.00
15% construction Engineering Cost	<u>\$ 63,880.00</u>
Total Construction Cost	\$489,746.00
Federal-aid funds @ 94.3%	\$461,830.00
<i>Town of Wellton Funds @ 5.7%</i>	<u>\$ 27,916.00</u>

\*A five percent surcharge is added per Local Government Engineer Memo of April 4, 1994.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction, the Town will and does hereby designate the State as authorized agent for the Town. The State hereby agrees to be authorized agent for the Town, and with the aid and consent of the Town and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of the Town and the FHWA, enter into a contract with a firm on behalf of the Town to whom the award is made for the construction of the project; such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Town and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA on behalf of the Town covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the Town will be responsible for any overage.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the Town shall be obligated to incur and will pay for said increased costs.

2. Prior to the solicitation of bids, the Town shall deposit funds with the State in the amount determined to be necessary to match federal funds in the ratio required.

3. The Town shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

4. The Town shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction.

5. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

6. Upon completion of construction, the Town shall provide for, at its own costs and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands curbs and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue – Mail Drop 616E  
Phoenix, AZ 85007  
FAX (602-712-7424  
lgrandy@dot.state.az.us

Town of Wellton  
Town Manager  
28634 Oakland Avenue  
Wellton, AZ 85356

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**TOWN OF WELLTON**

By John A. Nussbaumer  
JOHN A. NUSSBAUMER  
Mayor

**STATE OF ARIZONA**  
Department of Transportation

By John W. Carr, P.E.  
JOHN W. CARR, P.E.  
Acting Contract Administrator

ATTEST:

By Becky J. Hopkins  
BECKY J. HOPKINS  
DEPUTY Town Clerk

# *Town of Wellton*

## RESOLUTION # 387

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF WELLTON, YUMA COUNTY, ARIZONA, TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE TOWN OF WELLTON FOR THE ACQUISITION OF FEDERAL FUNDS FOR THE USE AND BENEFIT OF THE TOWN OF WELLTON FOR AG CONTRACT NO. KR02-162354N.**

**W** **HEREAS**, the State of Arizona is empowered by A.R.S. Section 28-401 and 28-334 to enter into an agreement and has delegated the authority to execute the agreement on behalf of the State of Arizona, and

**W** **HEREAS**, the Town of Wellton is empowered by A.R.S. Section 48-572 to enter into this agreement and has resolved to enter into this agreement and has authorized the Mayor to execute this agreement on behalf of the Town, and

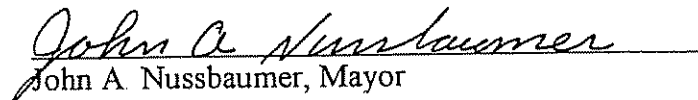
**W** **HEREAS**, Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings, and

**W** **HEREAS**, the Town of Wellton desires to see such project within the boundary of the Town of Wellton; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

**W** **HEREAS**, the only interest of the State of Arizona in the project is in the acquisition of federal funds for the use and benefit of the Town of Wellton by reason of federal law and regulations under which funds for the project are authorized to be expended

**N** **OW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE TOWN OF WELLTON, ARIZONA**, to authorize its duly elected Mayor to sign the Intergovernmental Agreement with the State of Arizona, acting by and through its Department of Transportation and the Town of Wellton for the purpose of defining responsibilities for the design and construction of the Los Angeles Avenue Pathway for the benefit and safety of the traveling public, and

**P** **ASSED AND ADOPTED** by the Mayor and Council of the Town of Wellton, Arizona, this 3<sup>rd</sup> day of September 2002.

  
John A. Nussbaumer, Mayor

ATTEST:


  
Gary L. Rinehart, Town Manager

JPA 02-041

RESOLUTION

BE IT RESOLVED on this 27<sup>th</sup> day of August, 2002, that I, the undersigned VICTOR M. MENDEZ, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Town of Wellton, for the purpose of defining responsibilities for the design and construction of the Los Angeles Avenue Pathway, for the benefit and safety of the traveling public.

Therefore, authorization is hereby granted to draft said agreement, which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution


  
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SAM MAROUFKHANI, P.E.  
Deputy State Engineer  
Development Intermodal Transportation Division  
  
for VICTOR M. MENDEZ, Director

JPA 02-041

APPROVAL OF THE TOWN OF WELLTON ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF WELLTON and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 20<sup>th</sup> day of September, 2002.

  
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Attorney



JANET NAPOLITANO  
ATTORNEY GENERAL

STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
TRANSPORTATION SECTION  
1275 WEST WASHINGTON STREET, PHOENIX, AZ. 85007-2926

TRN Main: (602) 542-1680  
Direct: (602) 542-8855  
Fax: (602) 542-3646

MAIN PHONE : (602) 542-1680  
FACSIMILE : (602) 542-3646

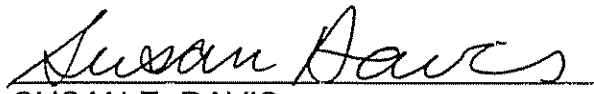
## **INTERGOVERNMENTAL AGREEMENT** **DETERMINATION**

A.G. Contract No. KR02-1623TRN (JPA 02-041), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED October 7, 2002.

JANET NAPOLITANO  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

/srs

Att.